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MAJL STOP : ISSUE FEE **FROM** : Gregory S. Smith
EXAMINER : John Hayes **FAXED ON** : August 6, 2004
FACSIMILE : (703) 746-4000 **LAVA GROUP FILE #:** 01004.1010
PHONE : (703) 305-9655
SUBJECT : Payment of Issue Fee for Serial Number 09/866,191 filed on May 25, 2001

This Transmission Includes the Following Items

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<input checked="" type="checkbox"/>	Part B - Fees Transmittal Form	1
<input checked="" type="checkbox"/>	PTO 2038 Credit Card Authorization	1
<input type="checkbox"/>		
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COMMENTS.

EXPEDITED PROCEDURE

Two Ravinia Drive
Suite 790
Atlanta, Georgia 30346

TELEPHONE: 404 815 9300
DIRECT: 770 804 9070
FACSIMILE: 770 804 0900

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:
Rabenold et al. §
Serial No.: **09/866,191** §
Filed: **May 25, 2001** §
Title: **REMOTE BIDDING SUPPLEMENT** §
FOR TRADITIONAL LIVE §
AUCTIONS §
Group Art Unit: **3621**
Examiner: **Hayes, John**
Atty. Docket #: **01004.1010**

**PAYMENT OF ISSUE FEE AND
COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

To the Office:

On July 12, 2004, the Office mailed a Notice of Allowance and Fees(s) Due along with a Notice of Allowability. This filing is in response to the Notice of Allowance and Fee(s) due and includes the following items:

Fee(s) Transmittal Form

Credit Card Authorization Form (PTO-2038) and

Comments on Statement for Reasons for Allowance

COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

In the Notice of Allowability, the Office has set forth various reasons for allowance and made certain allegations pertaining to various references.

It is hereby acknowledged that the positions taken in the examiner's statement of reasons for allowance is the personal opinion of the examiner as to why the claims are allowable. In accordance with MPEP 1304.14, the examiner's statement should not create an estoppel. But rather, only the applicant's statements should create an estoppel. In addition, the failure of the applicant to comment on the examiner's statement of reasons for allowance, or any portion thereof, should not be treated as acquiescence to the examiner's statement. Any inferences or presumptions are to be determined on a case-by-case basis by a court reviewing the patent, the USPTO examining the patent in a reissue application or a reexamination proceeding, the Board of Patent Appeals and Interferences reviewing the patent in an interference proceeding, etc.

Although the applicant acknowledges and agrees with the examiner's stated reasons for allowance of the pending claims, the applicant does not concede or admit that the examiner's stated reasons are the only reasons for allowability of the claims or the allowability of other claims based on the application that have either been previously presented or are subsequently presented in a continuation or continuation-in-part application.

MPEP 1304.14 also establishes that the applicant may set forth his or her position if he or she disagrees with the examiner's reasons for allowance. In general, the applicant hereby affirms each of the positions that the applicant has taken during the

prosecution of this application. More specifically, the applicant submits the following comments regarding the examiner's statements.

The examiner has stated that "Friedland et al disclose a system that integrates a remote auction audience with an onsite auction audience within a traditional-style, live auction while leaving an auctioneer in complete control of the auction event." The applicant respectfully disagrees with this allegation.

It is the applicant's position that Friedland et al's system does not leave an auctioneer in complete control of the auction event. Allowing the auctioneer to remain in complete control of the auction event as claimed in the present invention was a technical hurdle that Friedland et al was not able to clear and thus, was not described, suggested or taught by Friedland. In addition, the claimed invention would not have been obvious given the Friedland et al reference because this ability was simply not feasible based on the state of technology at the time Friedland et al was filed.

More specifically, for the auctioneer to remain in complete control of the auctioning event, significant throughput capabilities in the Internet are required. During the time period in which Friedland et al was filed, broadband was not prevalent and many remote bidders were accessing the Internet via a 28.8 Kbps, 33.6 Kbps or 56.6 Kbps modems. Also, the telecommunications infrastructure of the Internet was not robust during this time period. In many rural areas, users would be connecting to local points-of-presence (POPs) through antiquated telecommunication switches. An average time consumed for a packet to travel from the initial connected POP to the Internet backbone would be 250 milliseconds and traverse approximately ten (10) hops. This average did not take into account the typical rural conditions of antiquated analog switches. By

inference, one can assume that it would take a rural customer far greater time than 250 milliseconds to get to the Internet backbone. If one considers a common occurrence of a remote bidder receiving information from the clerk identifying a requested bid amount and thereafter the remote bidder submitting a bid, the round-trip time required from the backbone to the POP and vice versa would be greater than 500 milliseconds. When one includes the "last mile" delay as well as processing time and communication from the server to the backbone and vice versa, the amount of time in transit it took in the Friedland et al time period was greater than one second. When one takes into account: this necessary minimum processing time; the human delay involved in making the decision to bid; the processing time of remote bidding devices, servers, etc.; and Friedland et al's own submission that an item sells in ten seconds or less (with the integration of many bids), the system described in Friedland et al is unable to leave an auctioneer in complete control of the auction event. Friedland et al acknowledged and resolved this technical issue by removing control from the auctioneer and delegating it to the redistributor nodes as it related to the management of incoming bids.

The examiner has also stated that "Dinwoodie discloses an interactive remote auction bidding system and teaches that the auction site comprises a location remote from the participants at which bids are accepted and the auction is controlled by an auctioneer located at the auction site. The auctioneer functions in a capacity similar to the capacity of an auctioneer in a typical auction where participants are located at the auction site. The auctioneer is in complete control of the auction by deciding whether or not an accepted bid was the final asking bid for the lot." The applicant respectfully disagrees with this allegation.

It is the applicant's position that Dinwoodie does not describe, suggest or teach the integration of the local bidding audience into the auction process and that Dinwoodie merely discloses an auction bidding system that is only operable for remote bidding participants. If Dinwoodie had intended for a local bidding audience to be present and bidding against the remote bidding audience, Dinwoodie would have disclosed the appropriation for same. However, Dinwoodie does not describe, suggest or teach a mechanism that would allow either the auctioneer or the processor to distinguish between a local or a remote bid. Thus, it is illogical that the auctioneer functions in a capacity similar to the capacity of an auctioneer in a typical auction where participants are located at the auction site. Consequently, the remainder of the argument set forth by the examiner in support of Dinwoodie is invalid.

If there are any questions, applicant respectfully requests the Office to call the applicant's attorney.

Respectfully submitted,

By: 
Gregory Scott Smith
Reg. No. 40,819

LAVA Group Law by Smith & Frohwein, LLC
P.O. Box 88148
Atlanta, Georgia 30356
Office (770) 804-9070
Mobile (404) 643-3430